

The Gazette



of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 287] NEW DELHI, TUESDAY, DECEMBER 7, 1954

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 17th November 1954

S.R.O. 3535.—Whereas the election of Captain Awadhesh Pratap Singh, and Shrimati Krishna Kumari, as members of the Council of States by the elected members of the Vindhya Pradesh Legislative Assembly, has been called in question by an Election Petition jointly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Jageshwar Prasad Pandey, s/o Shri Dharamdatta, r/o Ghoghar, Rewa, Tahsil Huzoor, District Rewa, and Shri Munni Prasad Shukla, s/o Pandi Mahadeva Prasad, r/o Uprahati, Rewa, P/S Rewa, Tahsil Huzoor, District Rewa;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION TRIBUNAL, VINDHYA PRADESH

ELECTION PETITION No. 9 OF 1954

Jageshwar Prasad Pandey and Muni Prasad Shukla—*Petitioners.*

Versus

Captain Awadhesh Pratap Singh and others—*Respondents.*

Sri Syed Matin Ahmed—*Chairman*

Sri Durga Prasad, and

Sri Durgeshwar Dayal Seth—*Members*

Sri K. P. Shukla, Pleader—*for Petitioners.*

Sri Lal Ramesh Pratap Singh—*for Respondents.*

ORDER

The petitioners, by a common petition, seek to set aside the election of the Respondents Nos. 1 and 2, Sri Captain Awadhesh Pratap Singh and Shrimati Krishna Kumari respectively who were declared elected to the Council of States by the members of the Vindhya Pradesh Electoral College in the election held on the 22nd

March, 1954, to fill the vacancies to be caused by the retirement of two members on the expiry of their terms of office on the 2nd April, 1954. The two Respondents Nos. 1 and 2, Sri Captain Awadhesh Pratap Singh and Shrimati Krishna Kumari secured 20 and 16 votes respectively after 1st and 2nd preferences as against 12 votes secured by the petitioner No. 1 and the two respondents were declared elected. Petitioner No. 2, Muni Prasad Shukla had withdrawn his nomination, leaving the petitioner No. 1 and Respondents Nos. 1, 2, 3, and 4 in the contest. Respondents Nos. 3 and 4, Sri Brijendra Nath Chaturvedi and Sri Baijnath Dube respectively secured zero votes.

The total strength of the Vindhya Pradesh Electoral College was 53, out of which 50 voters exercised their right of votes. Three voters were absent. Two out of 50 votes polled were declared invalid by the Returning Officer at the time of counting.

Respondents Nos. 1 and 2 filed a common written statement. Respondent No. 4 Sri Baijnath Dube, beyond filing a written statement and saying that he 'agrees' with the petition filed by the two petitioners, took no part in the proceedings and did not appear. Respondent No. 3, Sri Brijendra Nath Chaturvedi did not put in any appearance. Respondent Nos. 3 and 4 were, therefore, *ex parte*. The petitioners had, originally, challenged the election of Respondents Nos. 1 and 2 on various grounds mentioned in paragraphs 6, 7 and 8 which read as follows:—

"6. That the election of Respondents Nos. 1 and 2 and the election as a whole is void and is liable to be set aside on the following grounds:—

- (a) That the Electoral Roll of the Parliamentary Constituencies were incomplete and were not validly prepared and published, depriving thereby the right of citizens to contest the election.
- (b) That the Returning Officer has violated the mandatory provisions of Section 56 of the R.P. Act 1951 and Rules made thereunder by curtailing the period of polls only to 4 hours as he fixed the hours of the poll from 9 A.M. to 1 P.M.
- (c) That the curtailment of the period of polls has materially affected the result of election as some of the electors arrived at the polling booth only a few minutes passed 1 P.M. and could not exercise their right of voting.
- (d) That the result of election has been materially affected by the improper acceptance of the nomination papers of Respondents Nos. 1 and 2 as they were not voters in the validly prepared and published electoral roll of the Parliamentary Constituency of Vindhya Pradesh and their nomination paper was not properly drawn up and validly presented.
- (e) That the Respondents Nos. 1 and 2 themselves and through their agents, workers, supporters and canvassers committed the corrupt practice of bribery by offering and promising gratification and seats in the sub-committees of the Vindhya Pradesh Legislative Assembly to some of the electors with a view to give them some financial gain with an object to induce them to vote for Respondents Nos. 1 and 2 the details whereof are given in the list 'A' of the particulars attached to the petition.
- (f) That the Respondents Nos. 1 and 2 themselves through their agents, workers, supporters and canvassers hired, procured and used motor cars to carry the electors to the polling booth the details whereof are given in the list 'B' of the particulars attached to this petition.

7 That the election of Respondents Nos. 1 and 2 is void inasmuch as the Return of election expenses filed by the Respondents Nos. 1 and 2 is false in material particulars details whereof is given in the list 'C' of the particulars attached to this petition.

8. That the result of the election has been materially affected by the improper reception and counting of votes polled in favour of Respondents Nos. 1 and 2 and non-compliance with the provisions of the Constitution, Representation of the People Act and rules and orders made thereunder."

On 14th September, 1954, the petitioners made an application, which we allowed, by which they gave up all the points mentioned in their petition, except the point contained in paragraph 6(b) which is all that remains of the petition. Paragraph 6(b) is:—

“That the Returning Officer has violated the mandatory provisions of Section 56 of the R.P. Act 1951 and Rules made thereunder by curtailing the period of polls only to 4 hours as he fixed the hours of the poll from 9 A.M. to 1 P.M.”

The written statement of Respondents Nos. 1 and 2 denied the violation of any mandatory provisions of the Representation of the People Act or rules made thereunder by the Returning Officer and reiterated that the polling hours were fixed by the Election Commission, New Delhi, which is the appropriate authority for the same and that Section 56 of the Act does not apply to the election for the members of the Council of States and that, in any case, the curtailing of polling hours is an irregularity which in itself does not vitiate the election, unless it is proved that the result of the election has been materially affected.

The written statement also contained the replies to the various other grounds mentioned in the petition but as those other grounds have been withdrawn by the petitioners, it is not necessary for us to deal with those replies and they are treated as struck out. On the pleadings of the parties, the following issues were framed:—

- “1(a) Whether the Returning Officer has violated the provisions of Section 56 of the R.P. Act and Rules framed thereunder by curtailing the period of polls only to four hours as alleged by the petitioners?
- (b) Were these provisions mandatory?
- (c) Was the Election materially affected thereby?
- 2(a) Whether the polling hours were fixed by the Election Commission, New Delhi?
- (b) Was he the appropriate authority for the same in this case?
- (c) Whether the curtailment of polling hours is mere irregularity and does not itself vitiate the election?

3. To what relief the parties are entitled?”

Issues Nos. 1 and 2.—We will deal with both the issues together as they are interdependent.

The petitioners did not examine any witness. The contesting Respondents Nos. 1 and 2 examined only one witness, Sri Ramesh Chandra Shrivastava, the Returning Officer at the time of the election, who has deposed that the election was held in the Assembly Hall at Rewa on the 22nd March, 1954. He admitted that he had fixed the time for poll from 9 A.M. to 1 P.M. He said that he had done so in accordance with the Ministry of Law Notification No. S.R.O. 760 published in the *Gazette of India, Extraordinary* No. 34 dated 26th February, 1954 (Ex R-4). He said he had received this Notification directly from the Election Commission India and had notified the intimation about the time of poll in the *Gazette Extraordinary, Vindhya Pradesh* Vol. III No. 173 dated 8th March, 1954 (Ex. R-3), copies of which were sent to the members of the Electoral College and to each of the validly nominated candidate.

The fact that the polling hours were fixed by the Central Government has not been challenged by the Petitioners. We, therefore, find that the polling hours were fixed by the Returning Officer under the directions of the Central Government.

Section 56 of the Representation of the People Act, 1951 requires that the appropriate authority shall fix the hours during which the poll will be taken. Appropriate authority has been defined by section 2(b) of the Representation of the People Act 1951 and means, in relation to an election to the House of the People or the Council of States or to a primary election, the Central Government. We have observed above that the hours of poll were fixed in accordance with the Government of India, Ministry of Law Notification (Ex. R-4). We, therefore, find that the Central Government was the appropriate authority within the meaning of section 56 of the Act to fix the hours of poll for this election.

The learned Pleader for the Petitioners urged that under section 56 of the Representation of the People Act, 1951, it was mandatory that the total period allotted on any one day for polling at an election in a Constituency shall not be less than 8 hours. He contended that the word ‘Electoral College’ was included in the word

'Constituency' mentioned in the proviso to section 56 of the Act and according to him the election was invalid as admittedly the poll lasted only for 4 hours and thus there was violation of the mandatory provision of section 56 of the Act.

We do not agree with this contention. The method for the election to the Council of States is contained in Part III (Chapter I) of the Representation of the People Act, 1951. For the purpose of this election the relevant provision is contained in section 12(2) (a) and (b) and in section 13 of the Act which, *inter alia*, provide that the President shall by a Notification in the *Gazette of India*, call upon the members of the Electoral College for each of the Part 'C' States and group of such States concerned to elect a member or members in accordance with the provisions of this Act and of the Rules and Orders made thereunder before such date as may be appointed in this behalf by the Election Commission and specified in such Notification. The provisions for the publication of the result of an election to the Council of States are contained in Sections 71 and 72 of Chapter VII of the Representation of the People Act, 1951.

We, thus, find that a special procedure has been prescribed for an election to the Council of States from an Electoral College. It is true that the word 'Electoral College' has not been defined in the Act but we know what it means. Section 27(a)(5) of the Representation of the People Act, 1950 says:—

"The Electoral College for each of the States of Ajmer, Bhopal, Coorg, Delhi and Vindhya Pradesh shall consist of the Members of the Legislative Assembly of that State."

By the amendment made by the Government of Part 'C' States Act, 1951 (Act 49 of 51) of section 27(c) of the Representation of the People Act, 1950, Vindhya Pradesh was taken out of the Fifth Schedule of the Representation of the People Act, 1950 and was no more a Constituency in respect of an election to the Council of States.

The proper procedure laid down for an election from an Electoral College is contained in Rule 73, Chapter V of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951. Under this the Returning Officer for such an election has to inform by notices each elected member of such Legislative Assembly which forms the Electoral College, of the date fixed for the poll under clause (d) of sub-section (2) of section 39 of the Representation of the People Act, 1951, of the hours of polling so fixed and the place fixed under sub-section (1) of section 29 at which the poll is to take place. It has been proved before us by the Returning Officer that the notices (Ex. R-2) regarding the date fixed for the poll, the hours of poll, and the place fixed for the poll, were published and served on all the members of the Electoral College as well as on each of the validly nominated candidate and there was no infringement of any of the rules.

By the above it is clear that the hours of polls had to be specifically fixed by the appropriate authority which was done in this case and the proviso to section 56 of the Act was not mandatory for this election as it was applicable only to Constituencies and not to an election by an Electoral College.

We, therefore, hold that there was no violation on the part of the Returning Officer of the provisions of section 56 of the Representation of the People Act or Rules framed thereunder. We also hold that the fixation of polling hours to 4 hours only was not an irregularity as there was, in fact, no curtailment of polling hours.

The learned Pleader for the Petitioners further urged that the result of the election, by reason of the alleged curtailment of polling hours, was materially affected.

The Returning Officer has deposed that the strength of the Electoral College at the time of the election was 53 (*vide* Ex. R-1). According to him the total number of valid votes polled was 48. Two votes were declared invalid, thus the total votes cast were 50. He also filed the copy of the Return from his record (Ex. R-5). Mr. Shrivastava explained to us in details the method prescribed for the collection of single transferable votes, but it is not necessary for us, for the purpose of the decision of this petition, to give that method. The Returning Officer also filed copies of the result and Transfer Sheet (Ex. R-6 and R-7). He gave the names of the three absent voters after looking at the copy of the list of Electors which was kept in a sealed cover and which was opened under our orders. The Returning Officer, after detailed calculations, deposed that even if the three absent voters had cast their first preference votes to the petitioner No. 1 the result of the election would not have been materially affected. Nothing, to the contrary, has been urged by the Petitioners.

We, therefore, hold that the result of the election was not materially affected.

Issue No. 3—On the above findings the petitioners are not entitled to any relief and their petition is liable to be rejected with costs.

The result, therefore, is that we order the petition to be dismissed with costs, which we assess at Rs. 100. We order the petitioners to pay the above costs to Respondents Nos. 1 and 2 only as the other respondents were *ex parte*.

(Sd.) S. M. AHMED, *Chairman*.

(Sd.) DURGA PR., *Member*.

(Sd.) D. D. SETH, *Member*.

Dated, Rewa, the 30th October, 1954.

[No. 82/9/54/18358.]

By Order,

K. S. RAJAGOPALAN, *Asstt. Secy.*

